

**IN THE HIGH COURT OF KARNATAKA AT BANGALORE**

**DATED THIS THE 27TH DAY OF JANUARY, 2009**

**PRESENT**

**THE HON'BLE MR.JUSTICE S.R.BANNURMATH**

**AND**

**THE HON'BLE MR. JUSTICE A.N.VENUGOPALA GOWDA**

**C.C.C.No.525 of 2008 (Civil)**

**BETWEEN;**

**SRI.G.BASAVARAJU  
S/O LATE SRI GAVISIDDAIAH  
AGED ABOUT 43 YEARS,  
R/AT NO.7, 9TH 'A' MAIN ,  
11 TH CROSS, 4TH BLOCK,  
NANDINI LAYOUT, BANGALORE96.**

**...COMPLAINANT**

**( BY SRI.H.K.KENCHEGOWDA , ADV.)**

**AND;**

**SMT. ARUNDATHI  
PRESIDENT,ANANDA CO-OPERTIVE BANK LIMITED,  
HIG-29, N.V.ARCASDE IST CROSS,  
2ND STAGE, KHB COLONY, BASAVESHWARNAGAR,  
HAVANOR CIRCLE, BANGALORE-560 001.**

**SRI.SRIKANTH L JATTAIAH  
SECRETARY, ANANDA CO-OPERTIVE BANK LIMITED,  
HIG-29, N.V.ARCASDE IST CROSS,  
2ND STAGE, KHB COLONY, BASAVESHWARNAGAR,  
HAVANOR CIRCLE, BANGALORE-560 001.**

**....ACCUSED**

**(BY SRI. N RAMACHANDRA, ADV. FOR A1 & A2)**

THIS CCC IS FILED UNDER SECTIONS 11 & 12 OF THE CONTEMPT OF COURT ACT PRAYING TO INITIATE CONTEMPT PROCEEDINGS AGAINST THE ACCUSED AND DIRECT THE ACCUSED TO IMPLEMENT THE ORDER PASSED BY THE HON'BLE STATE INFORMATION COMMISSION IN COMPLAINT NO.KIC/2860/ COM/2007, DATED 05-12-2007, VIDE ANNEXURE-'B'

This CCC having been reserved this day, A.N.VENUGOPALA GOWDA.J., made the following:

## **ORDER**

This contempt petition has been filed under Ss.11 and 12 of the contempt of Courts Act 1971 ('the Act' for short) to initiate contempt proceedings against the accused for non-implementation of an order dated 5.12.2007 passed by Karnataka Information Commission ('Commission' for short ) in case No.KIC/2860/ Com/2007 and to direct the accused, to implement the said order.

2 To appreciate the grievance raised in this petition, few relevant facts may be noted;

Complainant was a member of Ananda Co-operative Bank Limited, Basaveshwaranagar, Havanur Circle, Bangalore-79. Accused are the President and Secretary of the said Bank. Complainant had filed an application dated 17.7.2007 to the second accused under Ss.5(1), 5(2) and 19(1) of The Right to Information Act, 2005 ('RTI ACT' for short) requesting to furnish, a copy of the letter dated 23.12.2006 addressed to the Bangalore Water Supply and Sanitary Board and copies of documents such as, T.A., D.D. and Log Book extract and payments made to the first accused. Subsequently, he filed a complaint before the Commission against the second accused under S.18(1) of the RTI Act, for a direction to furnish copies of the aforementioned records. The Commission after inquiry in respect thereof, has passed an order dated, 5.12.2007 directing the respondent (accused No.2 herein) to furnish the relevant information on item No.1 and the information available on the record in respect of item No.2 to the complainant, free of cost, within 15 days. Complainant submitted a copy of the said order to the accused, along with his representation dated 20.12.2007, seeking compliance. In response thereto, the second accused sent a communication dated 20.12.2007 to the effect that, it has been decided to present appeal before the appellate authority. Complainant submitted a further representation dated 3.1.2008 seeking compliance, which having not been done, alleging willful disobedience of the order dated 5.12.2007 passed by the Commission and contending that, to protect the status, dignity, prestige and majesty of the Court, this petition has been filed.

We have heard Sri.H.K.Kenchegowda , learned counsel for the complainant, who contended that, the Commission stands on the same footing as that of a subordinate Court, the disobedience complained of, falls within the definition of the S.2(b) of the Act and therefore this Court has the power to take cognizance of the complaint alleged against the accused and committed by them.. He contended that, the provisions of S. 20 of the RTI Act is not efficacious in the matter of enforcement of the Commission order dated 5.12.2007 and the delay would defeat the object of the

Commission in passing the order and hence the accused should be punished for the act of committing contempt, with a further direction to implement the order without any delay.

Per contra, Sri.N.Ramachandra, learned counsel for the accused contended that, the Managing Committee of the Bank has decided to seek remedy against the said order of the Commission and necessary steps in that regard have also been taken. He further submitted that, there is no willful disobedience, in view of the communication dated 20.12.2007 sent to the complainant. . Relying upon an order dated 16.12.2008 passed by this Bench in CCC No.423/2008 (Civil) (T.Srinivasa Vs.J.J.Prakash) , learned counsel contended that, the contempt petition is not maintainable.

Considering the rival contentions, the following points, arise for decision;

- (i) Whether, for disobedience of the order passed by the Karnataka Information Commission, in exercise of the powers and functions under Ss.18 and 19 of the RTI Act, 2005, the contempt petition under the Contempt of Courts Act, is maintainable?
- (ii) Whether, the complainant has made out a prima facie case to frame charge against the accused?

Indisputable, the complaint of the complainant filed before the Commission was allowed and a direction was issued on 5.12.2007 to provide the relevant information. Accused have informed the complainant that, a decision has been taken to file an appeal against the said order. Grievance of the complainant is that, the said order has been willfully disobeyed by the accused, who should be directed to give effect to the same and punish them for non-compliance.

We have carefully perused the record and given anxious consideration to the rival contentions. For the reasons recorded infra, the contempt petition is not maintainable.

S.20(1) of the RTI Act enables the Commission to impose on the respondent before it, a penalty of two hundred and fifty rupees each day, till the information is furnished, subject to a total amount of twenty five thousand rupees. Prior to the imposition of such fine amount, it is mandatory that reasonable opportunity of hearing must be provided to the Public Information Officer-respondent. In addition, sub-section (2) thereof, enables the Commission that, if the concerned Public Information Officer, without any reasonable cause and persistently, has not furnished the information within the time specified under sub-section (1) of S.7. to recommend for disciplinary action against the concerned Information Officer, under the Service Rules applicable to him. The provisions contained in S.20 of RTI Act shows that, the Commission has been conferred with the jurisdiction to penalize the defaulting officer by levy of penalty up to a total amount of Rs.25,000/-

and also recommend for disciplinary action under the Service Rules applicable to the defaulting officer. Thus, it is clear that, the RTI Act itself provides the procedure and remedy.

S.20 of RTI Act provides for penalties. It confers powers on the Commission on the basis of which it can enforce its order. The Act having provided for constitution of the Commission and the power to impose the penalties by way of levy of fine and also the Statutory right to recommend to the Government for disciplinary action against the State Information Officer, itself has the necessary powers / provisions, in the form of the provisions of Contempt of Courts Act. It is cardinal principle of interpretation of Statute, well settled by catena of decisions of the Apex Court, that Courts or tribunals, must be held to possess power to execute its own order. Further, the RTI Act, which is a self-contained code, even if it has not been specifically spelt out, must be deemed to have been conferred upon the Commission the power in order to make its order effective, by having recourse to S.20.

In the case of SAKIRI VASU VS. STATE OF UTTAR PRADESH, reported in (2008) 2 SCC 409, it has been held as follows;

18. It is well settled that when a power is given to an authority to do something it includes such incidental or implied powers which would ensure the proper doing of that thing. In other words, when any power is expressly granted by the statute, there is impliedly included in the grant, even without special mention, every power and every control the denial of which would render the grant itself ineffective. Thus where an Act confers jurisdiction it impliedly also grants the power of doing all such acts or employ such means as are essentially necessary for its execution.

19. The reason for the rule (doctrine of implied power) is quite apparent. Many matters of minor details are omitted from legislation. As Crawford in his Statutory Construction (3rd Edn., p.267):  
"...If these details could not be inserted by implication, the drafting of legislation would be an interminable process and the legislative intent would likely be defeated by a most insignificant omission."

20.. In ascertaining a necessary implication, the court simple determines the legislative will and makes it effective. What is necessarily implied is as much part of the statute as if it were specifically written therein.

(Emphasis supplied by us)

The powers of the Commission to entertain and decide the complaints, necessarily shows that, the Commission has the necessary power to adjudicate the grievances and decide the matters brought before it, in terms of the provisions contained in the RTI Act. The legislative will, in incorporating S.20 in the RTI Act, conferring power on the Commission to impose the penalties, by necessary implication is to enable the Commission to do everything which is indispensable for the purpose of carrying out

the purposes in view contemplated under the Act. In our considered view, provisions of S.20 can be exercised by the Commission also to enforce its order. The underlying object in empowering the Commission to impose the penalty and/or to resort to other mode provided therein, cannot and should not be construed only to the incidents/events prior to the passing of an order by the Commission, but are also in aid of the order passed by the Commission and its enforcement/ execution, as otherwise, the legislative will behind the enactment gets defeated.

In the case of T.SRINIVASA (supra), the grievance put forth was that, an award passed by departmental arbitrator under the Karnataka Co-operative Societies Act, 1959, was not complied with and that there is willful disobedience by the accused. Against whom the contempt petition was filed. Considering the question of maintainability of the contempt petition, in view of the availability of the remedy under S.109 (13) of the said Act and also taking into consideration an order passed by this Court in the case of K.JAGDISH PONRAJ AND OTHERS VS. A.MUNIRAJU AND OTHERS (CCC 114/2007 (Civil), disposed of on 4.12.2008), it was held as follows;

9. The provision under Order 39 Rule 2A(1) relates to the consequence of disobedience or breach of injunction. The remedy available in case of disobedience or breach of injunction is provided therein itself, which in our view, has been made to provide a speedy inexpensive and effective forum and to avoid multiplicity of litigation before different forums. The legislative policies and intendment should necessarily weigh with us in giving meaningful interpretation to the provision. We do not find any extraordinary case having been made out by the complainants, who are insisting for initiation and prosecution of the proceedings under the Act, than by availing the remedy provided under the code. From the said perspective, taking into consideration the remedy provided under the Code, the complaint filed under the act, for taking action for breach or disobedience of an order of temporary injunction made or granted by the subordinate Court, is not permissible. In our view, when the subordinate court itself has been sufficiently empowered to deal with the situation, where there is disobedience or breach of the injunction order granted by it, the same forum should be approached for relief and to see that its orders are honoured and given effect to rather than seeking punishment under section 123 of the Act.

(Emphasis supplied)

In view of the powers conferred upon the Commission under S.20 of the RTI Act, the complainant has to seek relief there under and consequently, this contempt petition is not maintainable. Point No.(i) is answered accordingly.

In view of the above finding, point No.(ii), does not survive for consideration.

In the result, we hold that, the complaint is not maintainable and is dismissed accordingly, without prejudice to the right of the complainant, to approach Karnataka Information Commission, under S.20 of the RTI Act, for relief. No costs.

**(S.R.BANNURMATH)**  
**JUDGE**

**(A.N.VENUGOPALA GOWDA)**  
**JUDGE**